CF0000062587

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 162 /1999.

APPELLANT (IN JAIL) : Shivdhari, S/o. Mohan Singh, age 40 years, Resident of village- Devkhei, (Dekhel) PS- Patna, District- Korea, MP.

-Versus-

RESPONDENT. : The State of M.P. through PS- Patna, District- Korea, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE-1973.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A. No. 162/99. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

27.11.2006

Shri M.P.S. Bhatia, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State.

Heard.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 9.12.1998 passed by Additional Sessions Judge, Baikunthpur, District Korea in S.T.No.148/98, whereby Additional Sessions Judge after holding the accused/appellant along with co-accused Ramjhutan guilty for commission of offence under Sections 302 read with Section 34 & 459 of the IPC sentenced each of the accused persons to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year and R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year respectively.

The case of the prosecution, in brief, is that on 22.2.1998 when Dakhal Sai along with his wife Sonkunwar (since deceased) was at his residence, accused persons i.e. Shivdhari, Ramjhutan & Mansingh went to the house of Dakhal Sai in a drunken condition and entered the house after breaking the door. Accused Ramjhutan was carrying a knife in his hand, whereas accused Shivdhari was carrying a spade in his hand. Sonkunwar, wife of Dakhal Sai,

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मामला क्रमांक Cr.A. 162/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was sleeping in the verandah. Accused/appellant herein as well accused Ramjhutan enquired about her husband Dakhal Sai and asked her that where her husband has hidden, on this she replied that she has not hidden her husband, on which accused Ramjhutan kicked Sonkunwar. When Sonkunwar started running, the present accused/appellant caught hold of her and threw her on the ground, when she again tried to run away, accused Ramjhutan attacked her with the knife on her temporal region. Accused Shivdhari attacked her with the spade on her head, on which Dakhal Sai brought axe and attacked the accused persons. Thereafter, accused persons fled away. Sonkunwar succumbed to the injuries. Dakhal Sai lodged the report at the Police Station Patna. The Station House Officer, Police Station Patna registered the crime under Sections 302 & 452 of the IPC, took up the investigation, left for the place of occurrence and after giving notice (Ex.P-5) to the Panchas prepared the inquest (Ex.P-6) on the body of Sonkunwar. He took into possession the broken bangles of deceased Sonkunwar as also the spade under Ex.P-7. Blood stained soil and plain soil was taken into possession under Ex.P-8. Dhoti & shirt of accused /appellant was taken into possession under Ex.P-9. Dead body of Sonkunwar was sent for postmortem examination to the Community Health Centre, Patna under Ex.P-16, where Dr. Ashish Karan (PW-17) conducted the postmortem and prepared the report (Ex.P-21) in which he opined that the cause of death was comma due to head injuries and death was homicidal in nature.

After completion of usual investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate First Class,

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आदेश पत्रक (पूर्वानुबद्ध)

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Baikunthpur, who in turn committed the case to learned Sessions Judge, Sarguja from where Additional Sessions Judge, Baikunthpur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 17 witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence.

Learned Sessions Judge after hearing learned counsel for the respective parties and after perusal of the record, convicted and sentenced the accused/appellant herein and accused Ramjhutan in the manner as mentioned above in Para 1 of this judgment. However, co-accused Mansingh has been acquitted of the above charges.

On enquiry, accused Ramjhutan has informed that papers were sent to Shri Sinha, Advocate of Jabalpur and appeal was filed on his behalf and now Shri A.K. Prasad, Advocate is looking after the matter.

Shri A.K. Prasad, Advocate, who is present in Court, submitted that their office had never filed any appeal on behalf of accused Ramjhutan, they had filed the appeal on behalf of present accused/appellant Shivdhari only.

We have heard Shri M.P.S. Bhatia, Advocate for accused-Shivdhari and Shri U.N.S. Deo, Additional Public Prosecutor for the State.

Learned counsel for the accused/appellant herein did not dispute the homicidal death of Sonkunwar. Apart from that, from the evidence of Dakhal Sai (PW-6), husband of deceased, that the accused assaulted the deceased with the spade on her head and also from the medical evidence of Dr. Ashish

आदेश पत्रक (पूर्वानुबद्ध)

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Karan (PW-17), who conducted the postmortem, that the deceased died on account of head injuries and death was homicidal in nature, it is established that the death of Sonkunwar was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, there is only one eyewitness to the crime i.e. Dakhal Sai, husband of deceased, who has categorically stated that accused Ramjhutan assaulted the deceased with a knife, whereas, accused Shivdhari assaulted the deceased on her head with the spade. He has further stated that on seeing the accused persons assaulting his wife, he could not control himself and picked up the axe lying there and attacked accused persons. The above evidence of Dakhal Sai (PW-6) stands corroborated by the medical evidence as also the evidence of Rambaran (PW-8), son of deceased, who has stated that when he returned from the forest, he saw that accused Shivdhari & Ramjhutan were raising slogans "Jai-Jai" at his residence, on hearing this, he came to the house and saw that the dead body of his mother was lying there and accused persons were going saying 'Jai-Jai". Therefore, in view of the above evidence as also the medical evidence of Dr. Ashish Karan (PW-17), the involvement of accused/appellant in attacking the deceased on her head with the spade is established and on account of which even the skull bone of the deceased was fractured. Therefore, we do not find any illegality or infirmity in the impugned judgment of the trial court to this extent.

Learned counsel for the accused/appellant argued that in the evidence it has come on the record that the accused/appellant picked up the spade, which was lying in the house of deceased, and attacked her only once,

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आदेश पत्रक (पूर्वानुबद्ध)

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therefore, the case of the accused/appellant does not travel beyond Section 304 Part II of IPC.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

Having heard learned counsel for parties, we have perused the evidence of Dakhal Sai (PW-6) as also the medical evidence and we do not find any substance in the argument advanced by learned counsel for the accused/appellant, for the reasons that from the evidence it is evident that the present accused/appellant along with accused Ramjhutan went to the house of deceased, they asked the deceased about her husband and when she did not disclose, in the first instance, accused Ramjhutan attacked her with the knife and thereafter accused/appellant herein attacked her with the spade on her head, as a result of which her skull bone was fractured, that resulted in her death on the spot. Therefore, the intention of the accused/appellant herein was clear to cause death of Sonkunwar, as he attacked her with the spade, a deadly weapon, on the vital part of body because of which skull bone was fractured. Therefore, we do not find any illegality or infirmity in the judgment of trial court convicting and sentencing the accused/appellant herein under Sections 302/34 & 459 of the IPC.

In the result, the appeal of the appellant being devoid of merit liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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21/12/06